

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

JAN 18 2008

COURT OF APPEALS  
DIVISION TWO

IN RE ONE RESIDENCE LOCATED AT )  
8444 E. AGAPE DR. (TUC), BELLE )  
VISTA TOWNHOMES LOT 47, RESUB )  
SHEPIS PARK & PTN SW4 SEC4-14- )  
15, RECORDED IN THE OFFICE OF )  
THE PIMA COUNTY RECORDER )  
DOCKET 8582, PAGE 638, ALL )  
BUILDINGS, FIXTURES, )  
STRUCTURES AND )  
APPURTENANCES THERETO )  
\_\_\_\_\_ )

2 CA-CV 2007-0064  
DEPARTMENT A

MEMORANDUM DECISION

Not for Publication  
Rule 28, Rules of Civil  
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C-20034878

Honorable John F. Kelly, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney  
By Thomas J. Rankin

Tucson  
Attorneys for Appellee

Vernon E. Peltz

Tucson  
Attorney for Appellants

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H O W A R D, Presiding Judge.

¶1 Claimant Adam Goldstein appeals the trial court's order of forfeiture of his interest in property located at 8444 East Agape Drive, Tucson. Adam claims the trial court erred in finding the property was not exempt from forfeiture under A.R.S. § 13-4304(4).<sup>1</sup> Because substantial evidence supports the trial court's determination that the property was not exempt, we affirm the trial court's judgment.

¶2 We view the facts in the light most favorable to upholding the judgment. *In re \$26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 2, 18 P.3d 85, 87 (App. 2000). Adam Goldstein and his sister Marcy Goldstein owned the property at 8444 E. Agape Drive. Adam also owned another property located at 8428 E. Agape Drive. Norman Goldstein, Adam and Marcy's father, had been the original purchaser of both properties but had titled them in his children's names. Norman acted as an agent for Adam and Marcy in all aspects of ownership. All of the Goldsteins lived in New York or New Jersey during the relevant time period in this case.

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<sup>1</sup>Adam raises other issues on appeal concerning whether the trial court erred in finding Adam's original claim was legally insufficient to include his sister Marcy Goldstein as a claimant and whether the trial court erred in denying a motion to amend the claim to add Marcy. Adam does not explain how Marcy's status as a claimant would have affected the trial court's decision. And the court specifically stated the same findings of fact and conclusions of law would apply to Marcy if she were a claimant. After reviewing the record, we conclude the trial court's decision would have been the same even if Marcy had been added as a claimant, and we therefore decline to address these issues. *See Truck Ins. Exch. v. State Comp. Fund*, 138 Ariz. 116, 118, 673 P.2d 314, 316 (App. 1983) (appellate court only reviews issues affecting final judgment).

¶3 Norman hired Greg Shepis, a Tucson resident, to manage the properties. In 2001, the state commenced a forfeiture action on the property at 8428 E. Agape based on Shepis's use of the house to facilitate the distribution of marijuana. The forfeiture complaint, which Norman received, contained fifteen pages of factual allegations detailing Shepis's use of multiple properties for marijuana storage and the creation of fictitious leases for those properties. The complaint specified that, upon execution of a search warrant at 8428 E. Agape, police officers had found "drug ledgers, an SKS assault rifle, miscellaneous wrapping material, and approximately \$5,500.00 in U.S. currency." The state dismissed the forfeiture action after Norman informed it he had no knowledge that Shepis was using the house for criminal purposes.

¶4 Shepis pled guilty to facilitating the unlawful possession of marijuana for sale. When Norman learned, from a newspaper article detailing Shepis's criminal activity, that Shepis had been arrested, Norman fired him. Approximately six months later, however, Norman re-hired Shepis to manage his properties.

¶5 In 2003, the state commenced another forfeiture action, this time against the property located at 8444 E. Agape Drive, again for use in the distribution of marijuana, and again while Shepis was the property manager. Adam filed a claim asserting the property was exempt from forfeiture pursuant to § 13-4304(4). After a bench trial, the trial court found that Adam "could reasonably have known of the illegal activity or that it was likely to

reoccur” and therefore had not met his burden of proving his interest in the property was exempt from forfeiture.

¶6 On appeal, Adam contends the trial court erred in ruling the property was not exempt from forfeiture under § 13-4304(4), which provides in relevant part: “No owner’s . . . interest may be forfeited under this chapter if the owner . . . establishes . . . [h]e did not know and could not reasonably have known of the act or omission or that it was likely to occur.” The claimant owner has the burden of proving by a preponderance of the evidence that he is entitled to an exemption from forfeiture. A.R.S. § 13-4310(D); *see also In re \$315,900.00 U.S. Currency*, 183 Ariz. 208, 211, 902 P.2d 351, 354 (App. 1995). Whether the claimant has met this burden is a question of fact. *See \$26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 9, 18 P.3d at 89. We will not disturb the trial court’s factual findings unless they are clearly erroneous. *See \$315,900.00 U.S. Currency*, 183 Ariz. at 211, 902 P.2d at 354. If substantial evidence supports the court’s factual findings, those findings are not clearly erroneous. *See \$26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 9, 18 P.3d at 89. “Substantial evidence is evidence which would permit a reasonable person to reach the trial court’s result.” *Id.*, quoting *In re Estate of Pouser*, 193 Ariz. 574, ¶ 13, 975 P.2d 704, 709 (1999).

¶7 In this case, Norman, acting as Adam’s agent, had re-hired Shepis about six months after firing him for having used another property belonging to Adam to facilitate the sale of illegal drugs. Norman also knew or should have known that Shepis had created

fictitious leases on rental properties in furtherance of his prior crimes. Norman testified that, before the first forfeiture action, Shepis had had trouble keeping the property rented and Norman realized afterward that this was because Shepis was using the house to store marijuana. Norman also agreed, in response to an inquiry on cross-examination, that, soon after he had re-hired Shepis, “rents started going south again.” Yet Norman took no action until after he received notice of the second forfeiture action, at which time he again fired Shepis.

¶8 Norman conceded re-hiring Shepis was a mistake but protested that he had believed Shepis had changed and permitted him to manage the property again at the urging of Shepis’s mother and brother. However, Norman had taken no steps to ensure Shepis did not resume his illegal activities. The parties agree that Norman had “remained a passive owner of the property.” The events that gave rise to the first forfeiture action and the subsequent, similar events at the property in issue would permit a reasonable person to conclude that Norman could “reasonably have known” that the use of the property for marijuana distribution was likely to occur. § 13-4304(4)(c). And because Norman was acting as Adam’s agent, that knowledge is imputed to Adam. *See In re Milliman’s Estate*, 101 Ariz. 54, 65, 415 P.2d 877, 888 (1966) (“Notice to the agent is notice to the principal.”).

¶9 Adam further argues the trial court erred in basing its decision on the fact that he “could have taken reasonable precautions to make sure the same thing didn’t happen

again.” Adam cites *In re One 1983 Toyota Silver Four-Door Sedan*, 168 Ariz. 399, 404 n.4, 814 P.2d 356, 361 n.4 (App. 1991), for the proposition that § 13-4304(4) “does not require that the Goldsteins do all that could reasonably be expected to prevent the pr[o]scribed use of their property.” But the trial court did not find Adam was required to do “all that could reasonably be expected”; it found only that in light of Shepis’s prior actions and in light of the fact that Adam failed to take any preventative precautions, Adam could have known the illegal activity was likely to reoccur.

¶10 Adam also argues the evidence does not show that Norman “was in any way connected to the illegal activities of Greg Shepis” and that mere knowledge of Shepis’s prior actions is not enough to establish such a connection. Adam cites *In re One 1965 Ford Mustang*, 105 Ariz. 293, 300, 463 P.2d 827, 834 (1970), in support of this assertion. But the claimant in *One 1965 Ford Mustang* had no reason to suspect illicit use of her vehicle.

In that case, the supreme court observed:

There is no evidence—circumstantial or otherwise—that [the claimant] had any knowledge or reason to believe that [her son] would use the automobile for an illegal purpose[.] . . . [S]he had utmost confidence in her son, and believed him to be of good moral character . . . [and law enforcement] had never indicated to her anything which would arouse her suspicions to the contrary.

*Id.* at 301, 463 P.2d at 835. In this case, substantial evidence sustains the conclusion that Adam had considerable reason to suspect Shepis would use the property for an illegal purpose.

¶11 The trial court's determination that the property was not exempt under § 13-4304(4) is supported by substantial evidence and therefore is not clearly erroneous. *See \$26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 9, 18 P.3d at 89. We thus affirm the court's decision.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge